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LOS ANGELES
SUPERIOR COURT

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13 SUPERIOR COURT OF THE STATE OF CALIFORNIA

14 IN AND FOR THE COUNTY OF LOS ANGELES

15 CHURCH OF SCIENTOLOGY)
16 INTERNATIONAL, a California)
17 not-for-profit religious)
18 corporation;)

19 Plaintiffs,)

20 vs.)

21 GERALD ARMSTRONG; DOES 1)
22 through 25, inclusive,)

23 Defendants.)

24 _____)
25 AND RELATED CROSS-COMPLAINT)
26 _____)

No. BC 052395

DEFENDANTS ARMSTRONG'S
MEMORANDUM OF POINTS AND
AUTHORITIES IN OPPOSITION TO
SCIENTOLOGY'S MOTION TO STRIKE
CROSS-COMPLAINT OR PORTIONS
THEREOF, AND FOR SANCTIONS

DATE: November 30, 1992
TIME: 8:30 a.m.
DEPT: 30

NO TRIAL DATE
NO DISCOVERY CUT OFF
NO MOTION CUT OFF

27 Armstrong's amended cross-complaint asserts three causes of
28 action for declaratory relief, abuse of process and breach of
contract. Scientology would have this court strike out some 24
entire paragraphs which are required to support the causes of
action for declaratory relief and abuse of process.

Armstrong's abuse of process and declaratory relief claims
are interrelated. That which Armstrong asserts is wrong is

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1 Scientology's use of the settlement agreement as both a sword and
2 a shield, inasmuch as Scientology has acted in violation of the
3 agreement so as to disseminate falsehoods about Armstrong while
4 maintaining the position that, pursuant to contract, Armstrong
5 must maintain silence in the face thereof.

6 I. ARMSTRONG IS ENTITLED TO CHALLENGE PLAINTIFF'S
7 CLAIM TO RELIGIOUS STATUS AND MUST PLEAD THE BASIS THEREFOR

8 Scientology, over the years, has seized the status of a
9 religion by default, not by merit. Indeed, even though it was
10 regrettably constrained by the consequences of such a default, a
11 United States District Court went so far to say that Scientology,
12 L. Ron Hubbard's "religious cult," was nothing but "quackery
13 [which had] flourished throughout the United States and in various
14 parts of the world" after "Hubbard, writing in a science fiction
15 magazine in the 1940's, first advanced the extravagant false
16 claims that various physical and mental illnesses could be cured
17 by auditing." United States v. Article or Device. Etc. (D.D.C.
18 1971) 333 F.Supp. 357, 359. Now, 20 years later, despite
19 Scientology's shrill annexation of constitutional status as a bona
20 fide religious institution, the issue currently "remains a very
21 live and interesting question." Wollersheim v. Church of
22 Scientology (1989) 212 Cal.App.3d 872, 880, pet. for cert.
23 granted, vacated and remanded on other grounds, 111 S.Ct. 1298
24 (1991). This recent judicial pronouncement illustrates that
25 despite Scientology's efforts to achieve by litigation what it has
26 been unable to earn by merit, nothing has changed in the last 20
27 years. The First Amendment does not immunize a self-proclaimed
28 religion from governmental authority or cloak it in utter secrecy.
When an organization's religious status is of legal significance,
courts may make an objective inquiry into whether the
organization's beliefs are entitled to First Amendment religious
liberty protection. See, Wisconsin v. Yoder (1972) 406 U.S. 205,
209-13; Cantwell v. Connecticut (1940) 310 U.S. 296.

In United States v. Seeger (1965) 380 U.S. 163, the Supreme
Court defined religious beliefs meriting First Amendment
protection as those "based upon a power or being, or upon a faith,
to which all else is subordinate and upon which all else is

1 ultimately dependent." Id. 380 U.S. at 176. The Seeger court
2 required that these beliefs be "sincere" Ibid, and stated that
3 "the threshold question of sincerity must be resolved in every
4 case." Id. 380 U.S. at 185. Pursuant to this "sincerity"
5 standard, courts have not been willing to accept bare assertions
6 by litigants that their beliefs or conduct are "religious." See,
7 e.g., Yoder, 406 U.S. at 235 ("Aided by a history of three
8 centuries as an identifiable religious sect and a long history as
9 a successful and self-sufficient segment of American society, the
10 Amish in this case have convincingly demonstrated the sincerity of
11 their religious beliefs, the interrelationship of belief with
12 their mode of life, and the vital role that belief and daily
13 conduct play in the continued survival of . . . their religious
14 organization. . ."); International Society for Krishna
15 Consciousness, Inc. v. Barber (1981) 650 F.2d 430, 439-41; United
16 States v. Rasheed (9th Cir. 1981) 663 F.2d 843, 847-49 (alleged
17 religious belief in "Dare To Be Rich" program not sincerely held
18 because palpably deceitful); Jones v. Bradley (9th Cir. 1979) 590
19 F.2d 294, 295; United States v Kuch (D.D.C. 1968) 288 F.Supp. 439;
20 Van Schaick v. Church of Scientology of California (D.Mass. 1982)
21 535 F.Supp. 1125; Founding Church of Scientology v. United States
22 (D.C. Cir. 1969) 409 F.2d 212, cert. denied 396 U.S. 963 (1969).

23 The Supreme Court has warned against anything but the most
24 cautious review and exacting scrutiny when conferring entitlement
25 of religious status because the "absolute protection afforded
26 belief by the First Amendment suggests that a court should be
27 cautious in expanding the scope of that protection since to do so
28 might leave government powerless to vindicate compelling state
interests." McDaniel v. Paty (1978) 435 U.S. 618, 627, n. 7.

Founding Church of Scientology v. United States (D.C. Cir.
1969) 409 F.2d 1146 noted that "[l]itigation of the question
whether a given group or set of beliefs is religious is a delicate
business, but our legal system sometimes requires it so that
secular enterprises may not unjustly enjoy the immunities granted
to the sacred." Id. 409 F.2d at 1160. The court concluded that a
purported religion would not be entitled to protection under the
First Amendment upon a showing that

1 ". . . the beliefs asserted to be religious are not held in
2 good faith by those asserting them, and that forms of
3 religious organizations were created for the sole purpose of
 cloaking a secular enterprise with the legal protection of a
 religion."

4 Id. at 1162. In Theriahult v. Silber (W.D. Texas 1975) 391 F.Supp.
5 578, 580 the court indicated that criminal conduct by the members
6 of a purported religion caused it to "employ sharp and careful
7 scrutiny of his activities, including his claim of religious
 sincerity."

8 Applying these principles to the instant case, the
9 allegations set forth in ¶¶ 8 and 10 of the cross-complaint are
10 entirely proper. See Church of Scientology v. Commissioner of
11 Internal Revenue (1984) 83 T.C. 381, 422, aff'd, 823 F.2d 1310
12 (9th Cir. 1987) [concluding Scientology is profit driven
13 enterprise which engages in crimes, conspiracies, and fraud toward
14 that end and does not merit tax exempt status]; Church of
15 Spiritual Technology v. United States, (U.S. Claims Court, No.
16 581-88T, June 29, 1992) Bureau of National Affairs Tax Decisions
17 and Rulings (No. 131), July 8, 1992 [denying Scientology tax
18 exempt status and finding that its corporate hierarchy was
19 deliberately structured to deceive the IRS]; Hernandez v.
20 Commissioner (1989) 490 U.S. 680 [Scientology not operated for
21 strictly charitable and religious purposes]; Allard v. Church of
22 Scientology of California (1976) 58 Cal.App.3d 439 [Scientology
23 framed individual for crime as part of Fair Game policy]; Church
24 of Scientology of California v. Armstrong (1991) 232 Cal.App.3d
25 1060 [affirming trial court's holding that Scientology intimidates
26 with physical and psychological abuse and is clearly schizophrenic
27 and paranoid]; Wollersheim, supra, [Scientology neutralizes
28 heretics in a modern day inquisition]

 Given these recent decisions recognizing Scientology's
 cynical commercial purpose, policy of ruthless retribution, and
 criminal conduct, its present exaction of religious standing
 should be viewed with "sharp and careful scrutiny" and is the

1 proper subject of allegations pleaded toward that end. ^{1/} See,
2 Theriault, supra, 391 F.Supp. at 580.

3 **II. THE PLEADED FACTS ARE NECESSARY TO**
4 **SUPPORT THE ABUSE OF PROCESS CAUSE OF ACTION**

5 To plead an abuse of process cause of action, Armstrong must
6 plead facts to support the following elements:

- 7 1. That the defendant has used a legal process in a
8 wrongful manner, not proper in the regular conduct of a
9 proceeding, to accomplish a purpose for which it was not
10 designed;
- 11 2. That the defendant acted with an ulterior motive;
- 12 3. That a willful act or threat was committed by defendant,
13 not authorized by the process and not proper in the
14 regular conduct of the proceedings;
- 15 4. That the plaintiff suffered, damage, loss or harm;
- 16 5. That such damage, loss or harm was the result of such
17 use of the legal process.

18 BAJI 7.72 (1992 Revision)

19 Armstrong has pleaded the following conclusion under the
20 elements of the tort:

21 Defendants, and each of them, have abused the process of
22 this court in a wrongful manner, not proper in the
23 regular conduct of the proceedings in Armstrong I and in
24 Armstrong II, and in other litigation, to accomplish a
25 purpose for which said proceedings were not designed,
26 specifically, the suppression of evidence, the
27 obstruction of justice, the assassination of cross-
28 complainant's reputation, and retaliation against said
cross-complainant for prevailing at trial in Armstrong
I, all so as to be able to attack cross-complainant and
prevent cross-complainant from being able to take any
effective action to protect himself.

Defendants, and each of them, acted with an ulterior
motive to suppress evidence, obstruct justice,
assassinate cross-complainant's reputation, and to
retaliate against cross-complainant in said litigations.

That defendants, and each of them, have committed willful
acts of intimidation, threats, and submission of false and

¹ Scientology's criminal convictions in connection with
the burglary of and conspiracy against the I.R.S. are
detailed more fully in United States v. Heldt, et al., (D.C.
Cir. 1981) 668 F.2d 1238.

1 confidential documents not authorized by the process of
2 litigation, and not proper in the regular conduct of
litigation.

3 Cross-complainant has suffered damage, loss and harm,
4 including but not limited to his reputation, his emotional
tranquillity, and privacy.

5 That said damage, loss and harm was the proximate and legal
result of the use of such legal process.

6 (Cross-Complaint ["CC"] at 30:4-13) As facts in support thereof,
7 Armstrong has pleaded that Scientology implemented Fair Game
8 Policy activities against him and his former counsel causing his
9 counsel to pressure him to settle Armstrong I (CC at ¶¶ 14 at p.
10 5, 18 at p. 8), sought embarrassing personal information about
11 Armstrong from Beverly Rutherford and delivered slanderous
12 documents regarding him to the Los Angeles Times (CC at ¶ 24 at p.
13 11); publicly disseminated documents accusing Armstrong of
14 dishonesty (CC at ¶ 26 at p. 12); filed documents accusing him of
15 criminal activities in a court proceeding in England (CC at ¶¶
16 27-28 at p.12-13, 45 at p. 18-19); delivered altered documents
17 regarding Armstrong to the London Sunday Times (CC at ¶¶ 29 at p.
18 13, 37 at p. 16); attempted to blackmail Armstrong if he
19 testified in pending litigation against Scientology (CC at ¶ 30 at
20 p. 14); instructed his former lawyer to file non-opposition
21 papers trying to keep the file sealed in Armstrong I (CC at ¶ 31
22 at p. 14); threatened to use the settlement agreement to sue
23 Armstrong if he testified in pending litigation even if pursuant
24 to subpoena (CC at ¶ 33-34 at p. 15, ¶ 38 at p. 16, ¶ 40 ta p. 17,
25 ¶ 46 at p. 19) and then denied doing so (CC at ¶¶ 42-44 at p. 18);
26 disclosed the substance of the settlement agreement in court
27 papers (CC at ¶ 36 at p. 15); used false affidavits obtained from
Armstrong in conjunction with the settlement agreement in
litigation against the Internal Revenue Service (CC at ¶ 16 at p.
6, ¶ 48 at 20); used the court system as a sword to silence
Armstrong when it had used the same system to attack and slander
Armstrong (¶¶ 53-54 at p. 24-25); and used the court system as a
tool for the implementation of the Fair Game policy (¶¶ 56-57 at
p. 26-27).

28 Such acts hurt Armstrong. (CC at ¶¶ 28 at p. 13

1 [Scientology's disregard of the agreement as it pertains to
2 disclosures concerning Armstrong and efforts to enforce the
3 agreement against Armstrong cause him great anguish], ¶ 43 at p.
4 18 [same], ¶ 48 at p. 20 [Scientology's "use of the courts, and
5 the campaign to destroy ARMSTRONG's reputation have caused
6 ARMSTRONG great emotional distress."], and ¶ 49 at p. 21
7 [distribution of document of Armstrong's sealed pursuant to
8 settlement agreement caused him embarrassment and emotional
9 distress].

8 **III. THE PLEADED FACTS ARE NECESSARY TO**
9 **SUPPORT THE DECLARATORY RELIEF CAUSE OF ACTION**

9 Armstrong has pleaded a cause of action for declaratory
10 relief to obtain a judicial determination of his duties and
11 obligations under the contract. The same facts which support the
12 abuse of process cause of action apply to the declaratory relief
13 cause of action because at issue, inter alia, is whether
14 Scientology's use of the settlement agreement has deprived it of
15 any right to attempt to enforce the same.

14 In its complaint, Scientology accuses Armstrong of violating
15 the settlement agreement, and in his cross-complaint Armstrong
16 specifies the facts upon which he bases his argument that he is
17 under no obligation to abide by the agreement. Without pleading
18 Scientology's actions in violation of the settlement agreement,
19 the issues would not properly be raised regarding the legality of
20 Scientology's efforts to enforce the agreement. Without alleging
21 Scientology's violations of the settlement agreement, Armstrong
22 would not be able to apprise it of the nature, source and extent
23 of his claim. Thus, with respect to the declaratory relief
24 action, Armstrong is not prevented from alleging Scientology's
25 violations of the agreement because it is Scientology's use of the
26 agreement that is most important in Armstrong's seeking a
27 declaration of rights and obligations, particularly with respect
28 to whether or not Scientology's breaches excused Armstrong's
counter-performance. 1 Witkin, Summary of California Law,
Contracts, § 797 at 719.

1 **IV. SANCTIONS SHOULD NOT BE IMPOSED**

2 A judge may impose monetary sanctions incurred by the other
3 party "as a result of bad-faith actions or tactics, which are
4 frivolous or which are solely intended to cause unnecessary
5 delay." (C.C.P. § 128.5.) "Frivolous means (a) "totally and
6 completely without merit" or (b) "for the sole purpose of
7 harassing an opposing party." (C.C.P. § 128.5 (b)(2).)

8 A motion is "frivolous" and in "bad faith" where "any
9 reasonable lawyer would agree it is totally devoid of merit"; e.g.
10 lacking in any basis in statutory or case law, or without the
11 necessary evidence to support it. (Karawasky v. Zachay (1983) 146
12 Cal.App.3d 679, 194 CR 292.)

13 "Counsel face the danger of being trapped between their
14 obligation to their clients to diligently pursue any possibly
15 meritorious claim, and their obligation to the judicial
16 system to refrain from prosecuting frivolous claims. '[A]n
17 attorney is often confronted with clashing obligations
18 imposed by our system of justice. An attorney has an
19 obligation not only to protect his client's interests but
20 also to respect the legitimate interests of fellow members of
21 the bar, the judiciary and the administration of justice.'
22 [Citation.]"

23 (In re Marriage of Flaherty (1982) 31 Cal.3d 637, 647, 183 CR
24 508.) Frivolous includes only issues "prosecuted for an improper
25 motive - to harass the respondent or delay the effect of an
26 adverse judgment - or when it indisputably has no merit." (Id.,
27 31 Cal.3d at 650.) Even after defining frivolous the court
28 cautioned, ". . . any definition must be read so as to avoid a
serious chilling effect on the assertion of litigants' rights ..."
and therefore "the power to punish attorneys ... should be used
most sparingly to deter only the most egregious conduct." (Id. 31
Cal.3d at 650-51.)

23 Armstrong's original cross-complaint was 45 pages long. In
24 compliance with the Court's Order to amend, his amended cross-
25 complaint is 32 pages long. Since Armstrong eliminated all
26 allegations but those essential to his causes of action, Armstrong
27 not only complied with the Court's order, but also should not be
28 the subject of sanctions.

1 V. CONCLUSION

2 Based upon the foregoing points, and the authorities cited in
3 support thereof, Armstrong respectfully submits that Scientology's
4 motion to strike should be denied.

5
6 DATED: November 18, 1992

7 
8 By: _____

9 FORD GREENE and PAUL MORANTZ
10 Attorneys for Defendant
11 GERALD ARMSTRONG and THE
12 GERALD ARMSTRONG CORPORATION
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PROOF OF SERVICE

I am employed in the County of Marin, State of California. I am over the age of eighteen years and am not a party to the above entitled action. My business address is 711 Sir Francis Drake Boulevard, San Anselmo, California. I served the following documents: DEFENDANT ARMSTRONG'S MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO SCIENTOLOGY'S TO PLAINTIFF'S MOTION TO STRIKE CROSS-COMPLAINT OR PORTIONS THEREOF, AND FOR SANCTIONS

on the following person(s) on the date set forth below, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid to be placed in the United States Mail at San Anselmo, California:

Andrew Wilson, Esquire
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Also By Fax

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Also By Fax

- (By Mail) I caused such envelope with postage thereon fully prepaid to be placed in the United States Mail at San Anselmo, California.
- (Personal) I caused said papers to be personally service on the office of opposing counsel.
- (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

DATED: November 19, 1992

